taking into consideration all her injuries, her age and her station in life, a sum of $20,000 will amply compensate her. What is much more difficult is the assessment of damages for loss of future earnings. She was at the time of the accident employed as a domestic servant by a U.K. based civilian employed by the British Services in Singapore. She was paid $160 p.m. Previous to that she was employed by a military officer at $150 p.m. It is well-known that the British Services are gradually pulling out of Singapore and there will be a complete withdrawal by the end of 1971. The second plaintiff is now unable to work as a domestic servant. What is her loss in future earnings? Could she have had regular employment at $160 p.m. till the end of 1971? What salary would she have received after 1971? For how many years would she have worked as a domestic servant? These are some of the questions to which answers must be found.

The second plaintiff is 24 years old. She says she would have worked for another 15 years. She has three children aged 6, 5 and 4. They were looked after by her mother when she was employed as a domestic servant. She lived at her employer's residence and came home to visit her children once a week. What would have happened if her mother had died or for some other reason was unable to look after the second plaintiff's children? Would the second plaintiff in those circumstances have stopped work as a domestic servant in order to remain at home to look after her children? This is another factor which has to be taken into consideration in assessing loss of future earnings.

In my opinion she would most probably have been in regular employment as a domestic servant with the Service personnel until about the end of 1971 but not at $160 p.m. As more and more Service personnel leave Singapore there will be an abundance of servants looking for employment and wages are bound to fall if they have not already fallen. The accident occurred on 8th August, 1967. In my opinion the salary she would have earned till, say, August 1971 i.e. for a period of four years from the date of the accident would have averaged $120 p.m. A sum of $5,112 invested at five per cent will produce $120 p.m. for four years. After August 1971 I do not think she could have earned more than $80 p.m. as a domestic servant employed by an Asian family. There will be a glut of domestic servants available when the British Services have completely withdrawn from Singapore. Having regard to all the usual factors that are taken into consideration when assessing damages for lost of future earnings I would award her $80 p.m. for another six years. A sum of $4,876.80 invested at five per cent will produce $80 p.m. for six years. The second plaintiff claims $412 for transport expenses incurred on 103 visits to the General Hospital as an out-patient. Counsel for the defendant submits that this claim is exaggerated. The second plaintiff did not adduce any evidence in support of this claim. She stated that each trip by taxi cost her $4 and that she had to make such a large number of trips because she was undergoing physiotherapy treatment at the General Hospital thrice a week. In my opinion she was speaking the truth and I would allow her claim for $412. In the result I award her $29,988.80 as general damages and another $412 as special damages.

There will be judgment for the first plaintiff in the sum of $3,205 and for the second plaintiff in the sum of $30,400.80. The defendant will pay the plaintiffs' costs of this action as taxed. The amount of the judgment in favour of such plaintiff is to be paid to the Public Trustee in trust for the plaintiffs. There will be the usual order for payment of costs by the Public Trustee out of the monies in his hands.

Judgment for the plaintiffs.

Solicitors: *R. Ramason; Braddell Bros.*

RE WONG TEE LIAN

[O.C.J. (Raja Azlan Shah J.) July 11, 1969]
[Kuala Lumpur — Bankruptcy No. 50 of 1969]

Bankruptcy — Executor of estate — Whether can be adjudged bankrupt in his personal capacity for debts of his testator's business incurred after his death.

The question raised in this petition was whether an executor can be adjudged bankrupt in his personal capacity for the debts of his testator's business incurred after his death.

Held: an executor can be adjudged bankrupt in his personal capacity for the trade debts of the testator incurred after his death, provided the executor was in the first place sued in his personal capacity.

Cases referred to:—

(1) *In Re Fisher & Sons* [1912] 2 K.B. 491.

(2) *Labouchere* v. *Tupper* (1857). 34 E.R. 670; 11 Moore 198.

(3) *Re Evans* (1887), 34 Ch. D. 597.

(4) *Ex parte Garland* (1804), 32 E.R. 786; 10 Ves. Jun. 110.

BANKRUPTCY PETITION.

K.C. Choo for the petitioning creditor.

G. Vadivelu for the judgment debtor.

Cur. Adv. Vult.

Raja Azlan Shah J.: The question that is raised in this petition is whether an executor

can be adjudged bankrupt in his personal capacity for the debts of his testator's business incurred after his death.

Goh Joon Hoe, deceased, was trading in the name of Malacca Precast Concrete Works. He died in 1965. Under his will he appointed three persons to be his executors and trustees. After his death the executors continued to carry on their testator's business in his trade name. They contracted debts in the sum of $11,418.50 from Malayan Cement Berhad. The latter sued them in the trade name. No appearance was entered. On 30th October, 1968 they obtained judgment by default against the firm. On 24th February, 1969, Malayan Cement Berhad presented a petition against one of the executors, the present respondent, the act of bankruptcy being his non-compliance with a bankruptcy notice based on the said judgment. The present petition is brought against the respondent in his personal capacity. The respondent thinking that he is not personally indebted to the petitioning creditors opposed the petition.

The case *In Re Fisher & Sons* [1] does not help the petitioner. In that case there were three executors who were empowered under the will to contiue with the testator's business in his firm name. A creditor sued them in the firm name on the distinct bills of exchange. They entered appearance in their representative capacity and judgments were accordingly entered against them. A receiving order was subsequently made against the firm, the act of bankruptcy being non-compliance with a bankruptcy notice which was served on one of the partners on the two judgments. Later an application was made that the three executors constituting the said firm be adjudged bankrupt. It was held that where executors carried on their testator's business under the powers of his will in his firm name, they were not "partners" within the meaning of section 115 of the English Bankruptcy Act, 1853 (now section 115 of the Bankruptcy Act, 1914) which is in *pari materia* with our Bankruptcy Act, 1967, section 103, nor liable to be adjudicated as partners under a receiving order made on a petition presented in the firm name, but may be individually proceeded against as joint debtors.

In order to adjudge an executor bankrupt for the trade debts incurred after the testator's death, he must in the first place he sued in his personal capacity. The reason being that in such circumstances he is personally liable, whether or not he was authorised to do so under the will (*Labouchere* v. *Tupper*) [2] and not the estate of the deceased (*Re Evans*).[3] He may then be proceeded against as a bankrupt (*Ex parte Garland*).[4]

The answer to the question is therefore this. An executor can be adjudged bankrupt in his personal capacity for the trade debts of the testator incurred after his death, provided he was in the first place sued in his personal capacity.

For the above reasons the petition is dismissed with costs.

Petition dismissed.

Solicitors: *Shearn, Delamore & Co.; Xavier & Thambiah.*